TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 168.

J. CHARLES McGUIRE AND WILLIAM McGUIRE, PLAINTIFFS IN ERROR,

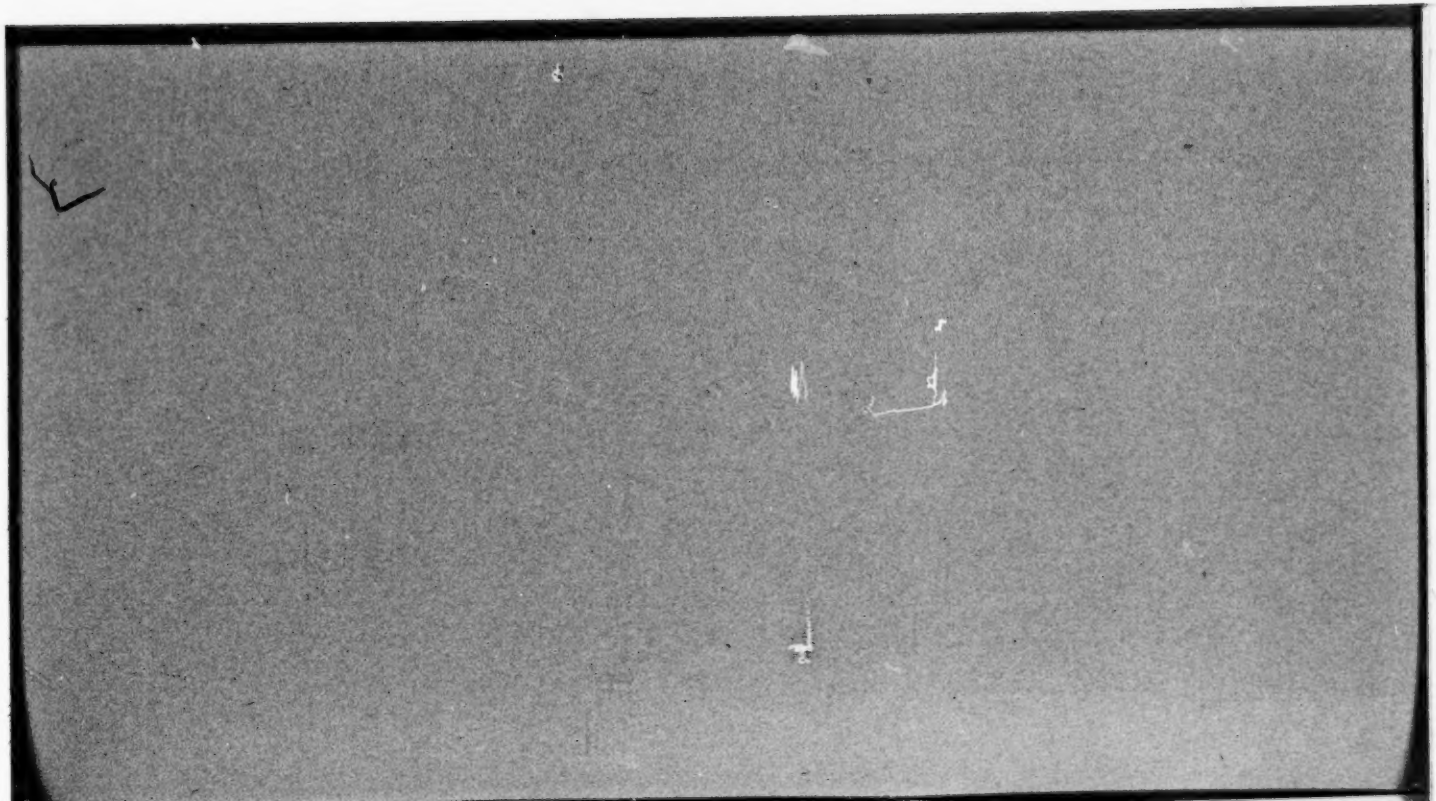
vs.

LOUIS GERSTLEY AND WILLIAM GERSTLEY, SURVIVING PARTNERS OF THE FIRM TRADING AS ROSSKAM, GERSTLEY & COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 19, 1905.

(20,019.)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 23, 1906.

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1 In the Court of Appeals of the District of Columbia.

No. 1550.

J. CHARLES MCGUIRE ET AL., Appellants,
vs.
LOUIS GERSTLEY ET AL.

Supreme Court of the District of Columbia.

No. 47367. At Law.

ISAAC ROSSKAM, LOUIS GERSTLEY, and WILLIAM GERSTLEY, Trading as Rosskam, Gerstley & Company, Plaintiffs,
vs.
JOHN F. MONAGHAN, J. CHARLES MCGUIRE, JOHN W. CLARK, WILLIAM MCGUIRE, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

Declaration.

Filed December 10, 1904.

In the Supreme Court of the District of Columbia.

Law. No. 47367.

ISAAC ROSSKAM, LOUIS GERSTLEY, WILLIAM GERSTLEY, Trading as Rosskam, Gerstley & Company, Plaintiffs,
vs.
JOHN F. MONAGHAN, J. CHARLES MCGUIRE, JOHN W. CLARK, WILLIAM MCGUIRE, Defendants.

The plaintiffs, Isaac Rosskam, Louis Gerstley, William Gerstley, trading as Rosskam, Gerstley & Company, sue the defendants, John F. Monoghan, J. Charles McGuire, John W. Clark and Wil-
2 liam McGuire, for that the defendants heretofore, to wit, on the 11th day of September, 1903, by their certain writing obligatory sealed with their seals, and now shown to the court here, the date whereof is the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the plaintiffs in the sum of $5,000.00 to be paid to the plaintiffs, which said writing obligatory was and is subject to the condition therein written in the words

following: that if the said John F. Monaghan and J. Charles McGuire shall strictly and faithfully pay or cause to be paid to said Rosskam, Gerstley and Company for merchandise now and hereafter so purchased, the moneys due and to become due thereon when and as the same shall become due and payable, then this obligation shall be null and void, otherwise it shall remain in full force and virtue. And the plaintiffs say that thereafter, to wit, on the days set forth in the particulars of demand hereunto annexed, and which are referred to and made a part of this declaration, the defendants, John F. Monaghan and J. Charles McGuire, purchased from the plaintiffs merchandise aggregating the sum of $14,497.16 as shown in said particulars of demand. And the said John F. Monaghan and J. Charles McGuire have paid on account thereof at various times as shown in said particulars of demand, the sum of $9,100.48, leaving a balance overdue and unpaid amounting to $5,396.68. And the plaintiffs say that the said John F. Monaghan and J. Charles McGuire have not paid or caused to be paid to the plaintiffs for merchandise purchased by them from the plaintiffs as aforesaid the moneys due or to become due thereon when and as the same became due and payable and no part of said balance of $5,396.68 has been paid by the defendants or either of them or by any other person, to the damage of the plaintiffs of $5,000.00, wherefore the plaintiffs bring this suit and claim the sum of $5,000.00 with interest, besides costs.

WOLF & COHEN,
EUGENE A. JONES,
Attorneys for Plaintiffs.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

WOLF & COHEN,
EUGENE A. JONES,
Attorneys for Plaintiffs.

Know all men by these presents that we, John F. Monaghan and J. Charles McGuire, of the city of Washington, District of Columbia, as principals, and John W. Clark, of the county of Alexandria, State of Virginia, and William McGuire, of the city of Washington, District of Columbia, as sureties, are held and firmly bound unto Isaac Rosskam, Louis Gerstley and William Gerstley, trading as Rosskam, Gerstley and Company in the sum of
3 five thousand (5,000) dollars, lawful money of the United States to be paid to the said Rosskam, Gerstley and Company for which payment well and truly to be made we and each of us do bind ourselves and each of our heirs, executors and administrators, jointly and severally, and firmly by these presents.

Sealed with our seals and dated this 11th day of September, 1903.

Whereas the above bounded John F. Monaghan and J. Charles McGuire are desirous of purchasing merchandise from Rosskam, Gerstley and Company, now and from time to time hereafter, which

the said John F. Monaghan and J. Charles McGuire have bound and hereby bind themselves to pay for in four months after the date of each respective purchase.

Now, therefore, the condition of the foregoing obligation is such, that if the said John F. Monaghan and J. Charles McGuire shall strictly and faithfully pay or cause to be paid to said Rosskam, Gerstley and Company, for merchandise now and hereafter so purchased, the moneys due and to become due thereon when and as the same shall become due and payable, then this obligation shall be null and void; otherwise it shall remain in full force and virtue.

JOHN F. MONAGHAN. [SEAL.]
J. CHAS. McGUIRE. [SEAL.]
JOHN W. CLARK. [SEAL.]
WM. McGUIRE. [SEAL.]

Signed and sealed in the presence of
LOUIS SMITH.
W. T. WHELAN.

Statement.

Messrs. Monaghan & McGuire, Washington, D. C., to Rosskam, Gerstley & Co., Dr.

1903.			
Sept.	24.	To mdse	$6365.45
Oct.	5.	"	168.79
	7.	"	167.12
	12.	"	15.30
	16.	"	698.19
	19.	"	37.65
	21.	"	190.58
	30.	"	30.26
Nov.	6.	"	14.98
	9.	"	17.25
	11.	"	506.33
	18.	"	256.44
	19.	"	78.28
	25.	"	879.61
	27.	"	37.47
4			
Dec.	2.	To mdse	30.92
	10.	"	1122.93
	14.	"	124.60
	17.	"	770.74
	22.	"	191.37
	23.	"	26.95
	30.	"	613.88
1904.			
Jan'y	18.	"	890.25
	21.	"	160.70

March	2.	"	.....	233.65	
	16.	"	.....	294.75	
April	22.	"	.....	318.24	
May	3.	"	.....	77.14	
	19.	"	.....	.50	
July	11.	"	.....	59.92	
	27.	"	....	96.92	
					$14497.16

Cr.

1903.					
Oct.	27.	By mdse	.....	62.33	
Dec.	9.	cash	....	500.00	
	14.	"	....	500.00	
	30.	"	.....	500.00	
	31.	mdse	.....	70.73	
1904.					
Jan'y	7.	cash	.....	500.00	
	18.	"	.....	500.00	
	21.	"	.....	500.00	
Feb'y	5.	"	....	500.00	
	24.	"	.....	500.00	
	29.	"	....	500.00	
March	16.	"	.....	2000.00	
April	26.	mdse	.....	917 32	
May	3.	"	.....	78.14	
	12.	commission	.....	212.65	
August	2.	mdse	.....	26.65	
October	4.	commission	.....	339.46	
	18.	mdse	.....	685.28	
	26.	commission	.....	170.95	
Nov.	11.	"	.....	36.97	
					9100.48
					$5396.68

5 *Memoranda.*

January 10, 1905.—Pleas of J. Charles and William McGuire, filed.

January 23, 1905.—Demurrer to pleas, filed.

January 27, 1905.—Death of plaintiff Rosskam suggested, judgment by confession against defendant Monaghan for $5000, with interest and costs. Demurrer to pleas of defendants J. Charles, and William McGuire sustained with leave to them to file amended pleas.

Pleas of Defendants.

Filed February 6, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47367.

ISAAC ROSSKAM ET AL., Trading as Rosskam, Gerstley & Company, Plaintiffs,
vs.
JOHN F. MONAGHAN ET AL., Defendants.

1. The defendants, J. Charles McGuire and William McGuire, for a plea to the declaration of the plaintiffs, say that the plaintiffs at the commencement of this suit were and still are indebted to the defendants John F. Monaghan and J. Charles McGuire in the sum of ten thousand dollars ($10,000) for that heretofore, to wit, on the 25th day of August, 1903, the plaintiffs entered into a certain agreement with the said Monaghan and J. Charles McGuire who are hereinafter designated as Monaghan and McGuire, whereby the plaintiffs agreed that, if the said Monaghan and McGuire would form a copartnership for the purpose of carrying on, in the District of Columbia, the business of wholesale liquor dealers and deal in the merchandise, to wit, spirituous liquors, to be furnished by the plaintiffs and would furnish to the plaintiffs a bond in the penal sum of five thousand dollars, with the defendants John W. Clark and William McGuire as sureties therein, conditioned for the payment to the plaintiffs of five thousand dollars of the indebtedness to be incurred by the said Monaghan and McGuire in the purchase by them from the plaintiffs, from time to time, of said merchandise, then and thereupon and in consideration thereof the plaintiffs would sell and furnish to said Monaghan and McGuire whenever requested by them, from time to time, at and for certain prices then specified and agreed upon by the parties to said agreement, the merchandise required in said business and so to be requested by said Monaghan and McGuire, and would allow to said Monaghan and McGuire for the goods so to be requested and required a continuous credit of ten thousand dollars and that said Monaghan and McGuire should sell the same to their customers in said business upon such terms as to time
6 of payment and otherwise as the said Monaghan and McGuire should find and believe to be the best terms obtainable, having in view the establishment and maintenance in said District, of a demand for the plaintiffs' goods and that the said Monaghan and McGuire would not be required to pay for said goods so sold to their customers until they could make collections therefor from their said customers; and it was then understood by and between all the parties to said agreement and as part thereof, that the said Monaghan and McGuire would enter upon said business without means or capital to sustain the same other than the continuous credit aforesaid and that in order to perform their part of said agreement the

said Monaghan and McGuire would be required to make sales of said merchandise to their customers on credit and to be paid for by said customers in periods varying according to circumstances as aforesaid.

Thereupon, to wit, on the date first aforesaid, the said Monaghan and McGuire formed said copartnership for the purpose aforesaid and thereafter furnished to the plaintiffs a bond prepared by the plaintiffs and which the plaintiffs accepted, and entered upon and fully established the business aforesaid and in all respects fully performed their said agreement so far as they were permitted by the plaintiffs to perform the same. At great labor and expense they obtained a large number of customers, to wit, from 70 to 80 customers to whom they sold on the terms aforesaid, goods purchased by them from the plaintiffs and from the 24th day of September, 1903, to the 10th day of December, 1903, the plaintiffs furnished to said Monaghan and McGuire from time to time under said agreement merchandise amounting in the aggregate to $10,617.55 which they sold to their said customers in accordance with the terms of the agreement and understanding aforesaid, excepting only a portion of said merchandise which they returned to and was accepted by the plaintiffs.

The plaintiffs then, to wit, on the 10th day of December, 1903, wrongfully and with the intent to destroy the business so established and to sell goods directly to said customers drew on the said Monaghan and McGuire for the sum of $1,500 on their said account and sent through various banks the draft of the plaintiffs for said amount payable at sight by the said Monaghan and McGuire and immediately thereafter, to wit, on the 11th day of December, 1903, and ever afterward wrongfully refused to furnish merchandise to the said Monaghan and McGuire at the prices aforesaid but demanded a large increase of said prices and thereafter, to wit, on and after the 13th day of January, 1904, wrongfully refused to furnish more goods under said agreement or further to perform said agreement and forced the said Monaghan and McGuire to abandon their said business which they had established at great expense, to wit, an expense of not less than $10,000 and in which their profits were very great; whereby, the plaintiffs wrongfully destroyed the credit and business of said Monaghan and McGuire and violated the
7 said agreement and the said Monaghan and McGuire were and each of them was thereby injured and damaged in the sum of ten thousand dollars for which sum the said J. Charles McGuire claims judgment against the plaintiffs; and these defendants are willing that the same may be set off against the plaintiffs' demand.

2. And the defendants J. Charles McGuire and William McGuire for a further plea to the said declaration say that the plaintiffs at the commencement of this suit were and still are indebted to the defendants John F. Monaghan and J. Charles McGuire in the sum of ten thousand dollars for that heretofore to wit, on the 11th day of September, 1903 the said John F. Monaghan and J. Charles McGuire, who are hereinafter designated as Monaghan and McGuire, entered into a certain agreement with the plaintiffs whereby

the said Monaghan and McGuire agreed to form a copartnership and as such copartners to establish and conduct, in the District of Columbia, the business of wholesale liquor dealers, and in such business to deal in the merchandise, to wit, whiskey and other spirituous liquors made and sold by the plaintiffs, and to give a bond with the defendants John W. Clark and William McGuire as sureties in the sum of five thousand dollars conditioned for the payment by said Monaghan and McGuire for all merchandise to be purchased by them from the plaintiffs on four months' credit, and in consideration thereof the plaintiffs thereby agreed to sell to said Monaghan and McGuire on credit from time to time such of the merchandise aforesaid as they should require in their said business and at and for certain prices then stated by the plaintiffs, and for such merchandise to allow to said Monaghan and McGuire a continuous credit in the sum of ten thousand dollars ($10,000).

And these defendants aver that thereupon, to wit, on the date last aforesaid, the said Monaghan and McGuire did form said copartnership and as such copartners did establish and thereafter conduct in said District of Columbia the business of wholesale liquor dealers and in such business dealt in the merchandise made and sold by the plaintiffs and did give the bond so as aforesaid agreed by them to be given and in all things fully performed the said agreement on their part to be performed; but notwithstanding the premises, the plaintiffs from time to time thereafter and while said agreement was in full force wrongfully refused to sell to said Monaghan and McGuire upon their request merchandise referred to in said agreement at and for the prices therein stated as aforesaid and also wrongfully refused to sell to said Monaghan and McGuire upon their request merchandise referred to in said agreement upon credit not exceeding ten thousand dollars and wholly neglected and refused upon the request of said Monaghan and McGuire to perform the said agreement on the part of the plaintiffs to be performed, whereby the said Monaghan and McGuire were forced to abandon their said business and to lose all the time, money and labor expended by them in and about the same and amounting to not less than ten thousand dollars ($10,000) and were
8 and each of them was injured and damaged in the sum of ten thousand dollars, for which sum the said J. Charles McGuire claims judgment against the plaintiffs; and these defendants are willing that the same may be set off against the demands of the plaintiffs.

LORENZO A. BAILEY,
Attorney for Defendants J. Charles McGuire & William McGuire.

Separate Pleas of the Defendant William McGuire.

1. And the defendant William McGuire, for a further plea to the declaration of the plaintiffs, says that the plaintiffs at the commencement of this suit were and still are indebted to this defendant in the sum of five thousand dollars, for that heretofore, to wit, on the 11th day of September, 1903, this defendant entered into a cer-

tain agreement with the plaintiffs whereby this defendant agreed to set his hand and seal as surety unto the writing obligatory mentioned in said declaration and in consideration thereof the plaintiffs agreed to sell certain merchandise to the defendants John F. Monaghan and J. Charles McGuire who are hereinafter designated as Monaghan and McGuire, at and for certain prices in said agreement specified and also to allow to said Monaghan and McGuire a continuous credit in the sum of ten thousand dollars ($10,000) for such merchandise to be sold to them by the plaintiffs. And thereupon this defendant in full performance of said agreement on his part did set his hand and seal to said writing obligatory but thereafter the plaintiffs wrongfully refused upon request to sell to said Monaghan and McGuire such merchandise at the prices aforesaid or to allow to them a continuous credit in the sum of ten thousand dollars as aforesaid, whereby the said Monaghan and McGuire were prevented from paying for the merchandise mentioned in said declaration and this defendant has incurred great liability and has been injured and damaged in the sum of five thousand dollars, for which sum this defendant claims judgment against the plaintiffs, and is willing that the same may be set off against the demand of the plaintiffs.

2. And the defendant William McGuire for a further plea to the said declaration says that he ought not to be charged with the said debt by virtue of said supposed writing obligatory, because he says, that before the making of the said supposed writing obligatory to wit, on the 11th day of September, 1903, the plaintiffs entered into an agreement with the defendants John F. Monaghan and J. Charles McGuire, hereinafter designated as Monaghan and McGuire, whereby, in consideration of the making of said writing obligatory whereby this defendant became bound as a surety as therein set forth, the plaintiffs agreed to sell to the said Monaghan and McGuire the merchandise referred to in said declaration at certain prices and upon certain terms specified in said agreement; but this de-
9 fendant avers that thereafter, to wit, on the 11th day of December, 1903, the plaintiffs without the consent or knowledge of this defendant, entered into another agreement with said Monaghan and McGuire and thereafter, to wit, on the 23rd day of March, 1904, without the knowledge or consent of this defendant the plaintiffs entered into another agreement with the said Monaghan and McGuire, by each of which said other agreements the terms and prices aforesaid were changed, to the prejudice of this defendant, and on and ever after the 11th day of December, 1903, the plaintiffs wrongfully refused to sell to said Monaghan and McGuire merchandise mentioned in the agreement first above mentioned at the prices or upon the terms therein specified, although thereunto duly requested by said Monaghan and McGuire whereby this defendant was wholly discharged of and from all liability under or by reason of said supposed writing obligatory.

3. And the defendant William McGuire, for a further plea to said declaration, says that all and every part of the merchandise purchased from the plaintiffs as alleged in said declaration was so purchased under and according to the terms of certain agreements not

under seal entered into from time to time before and since the 11th day of September, 1903, by and between the plaintiffs and the defendants John F. Monaghan and J. Caarles McGuire and not under or according to the terms of the supposed writing obligatory mentioned in said declaration; wherefore this defendant prays judgment if he ought to be charged with the said debt, by virtue of the said supposed writing obligatory.

LORENZO A. BAILEY,
Att'y for Def't Wm. McGuire.

Demurrer.

Filed February 7, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47367.

ISAAC ROSSKAM ET AL.
vs.
JOHN F. MONAGHAN ET AL.

Now comes the plaintiffs by their attorneys and demur to all of the pleas of the defendants J. Charles McGuire and William McGuire and to the separate pleas of the defendant William McGuire, and say that each and every of said pleas are bad in substance.

WOLF & COHEN,
EUGENE A. JONES,
Attorneys for Plaintiffs.

10 *Memorandum.*

Among the matters of law to be argued at the hearing of the above demurrer are the following.

1. That a surety cannot set-off a debt due to his principal in an action against the principal and surety.
2. That one member of a partnership cannot set-off a debt due the entire partnership.
3. That no substantial damages are alleged in said pleas.
4. That none of the matters set forth in said pleas are sufficient in law to operate as a release of the surety.

To L. A. Bailey, Esq., attorney for defendants:

Please take notice that we will call the above demurrer to the attention of the court on Friday the 10th day of February, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

WOLF & COHEN,
EUGENE A. JONES,
Attorneys for Plaintiffs.

Additional Pleas of Defendant.

Filed February 21, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47367.

ISAAC ROSSKAM ET AL.
vs.
JOHN F. MONAGHAN ET AL.

4. And this defendant William McGuire for a further plea to the said declaration says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that prior to the sealing of said writing obligatory the plaintiffs entered into an agreement with the defendants Monaghan and J. Charles McGuire, who are hereinafter designated as Monaghan and McGuire, to sell to the said Monaghan and McGuire the merchandise referred to in said writing obligatory at and for certain prices specified in a letter dated August 25, 1903, and sent by the plaintiffs to said Monaghan and the plaintiffs then represented and caused to be represented to this defendant that the said agreement was applicable to all merchandise to be purchased under said writing obligatory, which said letter was so sent and said representations were so made and caused to be made by the plaintiffs with the intent on their part thereby to induce this defendant to set his seal to said writing obligatory and this defendant believing said repre-
11 sentations to be true and relying thereon did thereupon set his seal to said writing obligatory and thereafter the said Monaghan and McGuire purchased from the plaintiffs merchandise amounting to $14,477.16, and no more, of which the sum of $10,617.55 was for merchandise so purchased at the prices aforesaid and the remainder, $3,859.61 was for merchandise purchased by said Monaghan and McGuire at other prices greatly exceeding the prices first above mentioned; which said last above mentioned purchases were made in pursuance of a certain other agreement which was entered into by and between the plaintiffs and said Monaghan and McGuire on or about the 11th day of December, 1903, but without the consent or knowledge of this defendant. And this defendant further says that the said Monaghan and McGuire have paid to the plaintiffs on account of the said sum of $10,617.55 the sum of $9,100.48 leaving due to the plaintiffs under said writing obligatory the sum of $1,517.07 and no more.

5. And this defendant William McGuire for a further plea to the said declaration says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says he set his seal to said writing obligatory and permitted the same to be delivered to the plaintiffs upon certain conditions then known to and accepted by the plaintiffs, that is to say, that the plaintiffs

would sell and would agree to sell to the defendants Monaghan and J. Charles McGuire, who are hereinafter designated as Monaghan and McGuire, the merchandise referred to in said writing obligatory at and for certain prices then and before that time, to wit, on August 25, 1903, specified by the plaintiffs and also that the indebtedness of the said Monaghan and McGuire for merchandise to be purchased by them under said writing obligatory would not at any time exceed the sum of $10,000. But this defendant says that the plaintiffs wholly failed to perform said conditions or any of them and in violation thereof refused to sell or to agree to sell said merchandise to said Monaghan and McGuire at and for the prices aforesaid and also permitted the indebtedness of said Monaghan and McGuire referred to in said declaration to be and continue from December 10, 1903, to January 21, 1904, greatly in excess of $10,000, whereby this defendant was wholly discharged of and from all liability under or by reason of said supposed writing obligatory.

6. And this defendant William McGuire for a further plea to the said declaration says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that on or about the date thereof, to wit, September 11, 1903, the defendants John F. Monaghan and J. Charles McGuire entered into a copartnership agreement between themselves to engage in the liquor business under the firm name of Monaghan and McGuire and to deal in the goods of the plaintiffs and during the year 1903 the said Monaghan and McGuire established said business and dealt in said goods with great profit to themselves and to the plaintiffs; that said writing obligatory was delivered to the plaintiffs for the
12 purpose of establishing and maintaining the credit of said Monaghan and McGuire with the plaintiffs and of maintaining said business: But on or about the 12th day of January 1904, the plaintiffs, well knowing the premises and with the intent to secure to themselves the customers and business which had been before that time obtained and established by said Monaghan and McGuire and to sell directly to such customers and thus increase the profits of the plaintiffs, wrongfully enticed and induced the said Monaghan to withdraw from said copartnership and to enter the employ of the plaintiffs and as agent of the plaintiffs to sell their goods to said customers; and thereupon the said Monaghan yielding to said enticement and inducement, did withdraw from said copartnership and did enter the employ of the plaintiffs as and for the purposes aforesaid, and thereby the business of said copartnership was wholly destroyed and said Monaghan and McGuire by reason thereof became and were unable to pay the plaintiffs for the merchandise referred to in said writing obligatory; all which the enticement and inducement by the plaintiffs and their employment of said Monaghan as aforesaid were without the consent or knowledge of this defendant, who was thereby wholly discharged of and from all liability under or by reason of said supposed writing obligatory.

LORENZO A. BAILEY,
Attorney for Defendant William McGuire.

Demurrer to Plea.

Filed February 23, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47367.

ISAAC ROSSKAM ET AL.
vs.
JOHN F. MONAGHAN ET AL.

Now come the plaintiffs by their attorneys and demur to the pleas of the defendant William McGuire, numbered 4, 5, and 6 and filed herein February 21, 1905, and say that each and every of said pleas is bad in substance.

WOLF & COHEN,
EUGENE A. JONES,
Att'ys for Plaintiff.

MEMORANDUM.—Among the matters of law to be argued at the hearing of the above demurrer is the following: That none of the matters set forth in said pleas or any one of them is sufficient in law to operate as a discharge of a surety.

13 To L. A. Bailey, Esq., attorney for defendants:

Please take notice that we shall call the above demurrer to the attention of the court on Friday the 24th instant at 10 o'clock a. m., or as soon thereafter as counsel may be heard.

WOLF & COHEN,
EUGENE A. JONES,
Att'ys for Plaintiff.

Supreme Court of the District of Columbia.

FRIDAY, *February* 24, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

At Law. No. 47367.

LOUIS GERSTLEY, WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company, Pl'ffs,
v.
JOHN F. MONAGHAN, CHARLES MCGUIRE, JOHN W. CLARK, WILLIAM MCGUIRE, Def'ts.

Upon motion of the defendants, the plaintiffs are hereby required to furnish security for costs by filing herein their undertaking with

surety to be approved by the court, or, in lieu thereof, by depositing with the clerk of this court the sum of fifty dollars, within five days.

Whereupon, the demurrers of the plaintiffs to the amended and additional pleas of the defendants, J. Charles McGuire and William McGuire coming on to be heard, it is considered that said demurrers be, and they hereby are sustained; thereupon said defendants say they will stand upon their pleas; whereupon the plaintiffs move for judgment of their demand against said defendants which is granted; therefore it is considered that the plaintiffs recover against said J. Charles McGuire and William McGuire the sum of five thousand dollars ($5,000) with interest thereon from this date, being the money payable by them to the plaintiffs, by reason of the premises, together with their costs of suit to be taxed by the clerk, and have execution thereof.

The defendants McGuire note an appeal to the Court of Appeals, and their bond to operate as a supersedeas is fixed in the penal sum of seventy-five hundred dollars ($7,500).

* * * * * * *

14 THURSDAY, *March* 16, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

At Law. No. 47367.

LOUIS GERSTLEY ET AL., Pl'ffs,
vs.
J. CHARLES MCGUIRE ET AL., Def'ts.

Upon motion of the defendant J. Charles McGuire, leave is hereby given him to file a bond for costs on his appeal herein, in the penalty of one hundred dollars.

Memoranda.

March 22, 1905.—Notice of motion for approval of appeal bonds filed.

March 22, 1905.—Appeal bonds filed.

Order for Transcript.

Filed March 24, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47367.

LOUIS GERSTLEY ET AL.
v.
JOHN F. MONAGHAN ET AL.

The clerk will please prepare and certify the transcript of record on the appeal of the defendants J. Charles McGuire and William McGuire, including therein the following, only, viz:

1. Copy of declaration, with notice to plead, copy of bond and statement attached to declaration omitting affidavit.

2. Memoranda as follows:

Memo.: Jan'y 10, 1905, pleas of defendants J. Charles McGuire and William McGuire filed.

Memo.: Jan'y 23, 1905, demurrer of plaintiffs to said pleas filed.

Memo.: Jan'y 27, 1905, death of plaintiff Isaac Rosskam suggested.

Judgment by confession against defendant Monaghan for $5000, with interest and costs. Demurrer of plaintiffs to pleas of defendants J. Charles McGuire and William McGuire sustained with leave to said defendants to file amended pleas.

3. Copy of amended pleas of defendants J. Charles McGuire and William McGuire and separate pleas of defendant William McGuire, all filed February 6, 1905, omitting affidavits; and demurrer
15 filed February 7, 1905, to all said pleas, with memorandum attached to said demurrer.

4. Copy of additional pleas Nos. 4, 5, and 6, of defendant William McGuire, filed February 21, 1904, omitting affidavit; and demurrer, filed February 23, 1905, to said pleas with memorandum attached to said demurrer.

5. Copy of judgment entered February 24, 1905.

6. Copy of order entered March 16, 1905, as to appeal bond of defendant J. Charles McGuire.

7. Memorandum as follows:

Memo.: March 22, 1905, notice under common-law rule 105 filed; appeal bond of defendant J. Charles McGuire $100, for costs and appeal bond of defendant William McGuire $7,500 supersedeas, approved and filed.

8. Copy of this order.

LORENZO A. BAILEY,
Attorney for Defendants J. Charles McGuire and William McGuire.

Received a copy of the foregoing order as to transcript of record, this 24th day of March, 1905.

EUGENE A. JONES,
Attorney for Plaintiffs.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 23, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 47,367, at law, wherein Isaac Rosskam, Louis Gerstley and William Gerstley, trading as Rosskam, Gerstley & Company, are plaintiffs, and John F. Monaghan *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 2nd day of May, A. D. 1905.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1550. J. Charles McGuire *et al.*, appellants, *vs.* Louis Gerstley *et al.* Court of Appeals, District of Columbia. Filed May 5, 1905. Henry W. Hodges, Clerk.

15½ THURSDAY, *October 12th, A. D.* 1905.

No. 1550.

J. CHARLES MCGUIRE and WILLIAM MCGUIRE, Appellants,
vs.
LOUIS GERSTLEY and WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company.

The argument in the above entitled cause was commenced by Mr. L. A. Bailey, attorney for the appellants.

FRIDAY, *October 13th, A. D.* 1905.

No. 1550.

J. CHARLES MCGUIRE and WILLIAM MCGUIRE, Appellants,
—
LOUIS GERSTLEY and WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company.

The argument in the above entitled cause was continued by Mr. L. A. Bailey, attorney for the appellants, and by Mr. E. A. Jones, attorney for the appellees, and was concluded by Mr. L. A. Bailey, attorney for the appellants.

Both sides are allowed to file additional authorities herein, if so advised.

16 No. 1550.

J. CHARLES McGUIRE and WILLIAM McGUIRE, Appellants,
vs.
LOUIS GERSTLEY and WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company.

Opinion.

(Mr. Chief Justice SHEPARD delivered the opinion of the court:)

The appellees, Rosskam, Gerstley & Co., brought this action against John F. Monaghan, J. Charles McGuire, John W. Clark, and William McGuire, upon a bond executed by them, under seal, on September 11, 1903, and binding them to the plaintiffs in the sum of $5,000. The purpose and condition of the said bond read as follows:

"Whereas the above bounded John F. Monaghan and J. Charles McGuire are desirous of purchasing merchandise from Rosskam, Gerstley and Company, now and from time to time hereafter, which the said John F. Monaghan and J. Charles McGuire have bound and hereby bind themselves to pay for in four months after the date of each respective purchase.

"Now, therefore, the condition of the foregoing obligation is such, that if the said John F. Monaghan and J. Charles McGuire shall strictly and faithfully pay or cause to be paid to said Rosskam, Gerstley and Company, for merchandise now and hereafter so purchased, the moneys due and to become due thereon when and as the same shall become due and payable, then this obligation shall be null and void; otherwise it shall remain in full force and virtue."

The declaration alleges that Monaghan and J. Charles McGuire purchased merchandise of the plaintiffs to the amount of $14,497.16, upon which a balance of $5,396.68 is due and unpaid. A statement of the account shows the various items of merchandise with dates of sales, commencing September 24, 1903, and ending July 27, 1904, and also the items and dates of credits allowed.

Judgment by confession was entered against Monaghan January 27, 1905.

On February 6, 1905, J. Charles McGuire and William McGuire filed two joint pleas of set-off. The first of these alleges that plaintiffs are indebted to Monaghan and J. Charles McGuire in the sum of $10,000, for this, that on August 25, 1903, plaintiffs entered into a certain agreement with said Monaghan and McGuire, that if the latter would form a partnership to carry on the business of wholesale liquor dealers in the District of Columbia and deal in the merchandise to be furnished by plaintiffs, and would furnish plaintiffs with a bond in the sum of $5,000, with John W. Clark and William McGuire as sureties, conditioned for the payment of the indebtedness to that amount to be incurred by said Monaghan and McGuire, then plaintiffs would furnish Monaghan and McGuire from time to time, when requested, "and at certain prices then specified and agreed upon by the parties to said agreement," and would allow them a continuous credit of $10,000; and that said Monaghan and McGuire

should sell the same to their customers "upon such terms, as to time and otherwise, as the said Monaghan and McGuire should find and believe to be the best terms attainable, having in view the establishment and maintenance in said District of a demand for the plaintiffs' goods, and that the said Monaghan and McGuire would not be required to pay for said goods so sold to their customers, until they could make collections therefor from their said customers." And it was further understood that said Monaghan and McGuire would enter upon said business without capital other than the continuous credit aforesaid, and that, in order to perform their agreement, they would be compelled to make sales to their customers upon credit, in periods varying according to the circumstances aforesaid; that Monaghan and McGuire formed the said partnership, furnished the said bond, and began business as aforesaid; that at great labor and expense, they obtained about eighty customers, to whom they sold on credit, the goods purchased from plaintiffs. That on December 10,
1903, the plaintiffs, with intent to destroy the business so
17 established, and to sell goods directly to said customers drew upon them for $1,500, and wrongfully refused to furnish them any more goods at the prices agreed upon, but demanded a large increase thereof, and thereby forced them to abandon their business, which they had established at an expense of $10,000, and in which their profits were great. That they thereby destroyed the said business and violated the said agreement to the damage of each of said partners in the sum of $10,000, for which J. Charles McGuire claims judgment against the plaintiffs; and defendants are willing shall be set off against the plaintiffs' demand.

The second plea is substantially of the same effect.

William McGuire subsequently filed three additional pleas.

The first plea sets out, briefly, but substantially, the agreement with Monaghan and McGuire, as recited in the first and second pleas before stated, and that defendant subscribed the bond as surety for them in performance of said agreement. It then alleges that through the breach of the agreement by plaintiffs, Monaghan and McGuire were prevented from paying for the merchandise furnished them, and thereby defendant has been damaged in the sum of $5,000, which he pleads in set-off.

The second additional plea avers the making of the said agreement in consideration of which defendant executed the bond, as in the first plea stated. It then further avers that afterwards, on to wit, December 11, 1903, plaintiff, without the knowledge or consent of defendant, entered into another agreement with Monaghan and McGuire, by which the prices were changed to the prejudice of defendant, and then again refused to sell merchandise to Monaghan and McGuire, whereby defendant was discharged from all liability on said bond.

The third additional plea avers that all of the merchandise described in the bill of particulars was purchased under the terms of certain agreements not under seal, entered into from time to time before and since September 11, 1903, and not under or according to

the terms of the obligations sued on, wherefore defendant has been discharged.

Defendant then filed three additional pleas.

The first of these (numbered 4) alleges the general agreement between plaintiffs and Monaghan and McGuire, and then adds that plaintiffs agreed to sell them goods "at, and for certain prices specified in a letter dated August 25, 1903, and sent by the plaintiffs to said Monaghan, and the plaintiffs then represented to this defendant that the said agreement was applicable to all merchandise to be purchased under said writing obligatory, which said letter was so sent and said representations were so made and caused to be made by the plaintiffs with the intent on their part thereby to induce this defendant to execute said writing obligatory, and this defendant, believing said representations to be true, and relying thereon, did set his seal," etc. That thereupon, Monaghan and McGuire purchased merchandise amounting to $14,477.16 and no more, of which sum $10,617.55 was for merchandise purchased at the prices aforesaid, and the remainder, $3,859.61 was for merchandise purchased at prices greatly exceeding the same, under another agreement made about December 11, 1903, without this defendant's knowledge or consent. That Monaghan and McGuire have received the sum of $9,100.48 on said first named amount leaving due under said bond the sum of $1,517.07 and no more.

The next additional plea (numbered 5) sets out the general agreement as before, but adds thereto that it was agreed that the merchandise sold should never exceed $10,000. That plaintiffs failed to perform that condition, or any other, and permitted the indebtedness of Monaghan and McGuire to exceed the said sum, whereby defendant has been discharged of his liability under said bond.

The last additional plea reads as follows:

6. And this defendant William McGuire, for a further plea to the said declaration, says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that on or about the date thereof, to wit, September 11, 1903, the defendants John F. Monaghan and J. Charles McGuire entered into a copartnership agreement between themselves to engage in the liquor business under the firm name of Monaghan and McGuire, and to deal in the goods of the plaintiffs, and during the year 1903 the said Monaghan and McGuire established said business and dealt in said goods with great profit to themselves and to the plaintiffs; that said writing obligatory was delivered to the plaintiffs for the purpose of establishing and maintaining the credit of said Monaghan and McGuire with the plaintiffs, and of maintaining said business. But on or about the 12th day of January, 1904, the plaintiffs, well knowing the premises, and with the intent to secure to themselves the customers and business which had been before that time obtained and established by said Monaghan and McGuire, and to sell directly to such customers, and thus increase the profits of the plaintiffs, wrongfully enticed and induced the said Monaghan to withdraw from said copartnership and to enter the employ of the plaintiffs, and as agent of the plaintiffs to sell their goods to said customers; and thereupon

the said Monaghan, yielding to said enticement and inducement, did withdraw from said copartnership and did enter the employ of the plaintiffs as and for the purposes aforesaid, and thereby the business of said copartnership was wholly destroyed, and said Monaghan and McGuire by reason thereof became and were unable to pay the plaintiffs for the merchandise referred to in said writing obligatory; all which the enticement and inducement by the plaintiffs and their employment of said Monaghan as aforesaid were without the consent or knowledge of this defendant, who was thereby wholly discharged of and from all liability under or by reason of said supposed writing obligatory.

Demurrers were sustained to each of the foregoing pleas, and defendants, J. Charles McGuire and William McGuire, electing to stand upon said pleas, judgment was entered against them for $5,000 on February 24, 1905. From this they have jointly appealed.

1. The court did not err in sustaining plaintiffs' demurrer
18 to the joint pleas of set-off filed by J. Charles McGuire and William McGuire, principal and surety, respectively.

The plea of set-off is in the nature of a cross action by the defendant, who, it is declared in the code, "shall be deemed to have brought an action at the time of filing such plea against the plaintiff for the matters mentioned in the plea." When such plea has been filed, the plaintiff may not discontinue his action without the defendant's consent, and, whether he undertakes to maintain his claim or not, "the defendant shall be entitled to a trial of, and judgment upon, his claim." Sec. 1565; Samaha *v.* Samaha, 18 App. D. C. 76.

It follows, necessarily, that the plea must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were the plaintiff in the prosecution of a suit therefor. And while the technical formality and accuracy of a declaration may not be required, the plea must, nevertheless, inform the plaintiff, with reasonable certainty, of the particulars of the demand which he is called upon to defend. Crawford *v.* Simonton, 7 Post. (Ala.) 110, 126; O'Brien *v.* Anniston Pipe Works, 93 Ala. 582, 584; Garrett *v.* Love, 89 N. C. 205, 207; Waterman on Set-off, secs. 646, 648; Ency. Pl. & Pr. 751, 752.

The two pleas fail under the application of this test. Without reference to the general vagueness of allegation, it is sufficient to say that they are notably defective in respect of the agreement claimed to have been made between the plaintiffs and Monaghan and McGuire for the sale of merchandise, and of the manner in which that agreement was violated to the injury of them and their sureties. If there was an agreement between the plaintiffs and the principals, of which the contract of the sureties formed a part, and the breach of which occasioned recoverable damage, it was incumbent upon them to set out the terms of the same and the acts of breach with reasonable certainty. What has been said applies also to the first and fourth separate pleas of set-off by William McGuire, the surety.

2. The errors assigned on the striking out of the second, third, and fifth separate special pleas of the surety, William McGuire, can be considered together, as they rest upon substantially the same

ground. As general defenses to the action against the surety, they substantially repeat the allegations of the pleas of set-off that have been considered. The fourth plea goes a little further in respect of the agreement made for the sale of merchandise than the others, by alleging that it was contained in a certain letter, which, however, is not set out, nor are its contents in respect of terms, prices, etc., alleged. The fifth plea omits the reference to the letter, but adds another item of the general agreement which it alleges the violation of, namely, that plaintiffs would never permit the indebtedness of Monaghan and McGuire to exceed $10,000.

It is questionable if these pleas were sufficiently certain and definite; but assuming that they do state an agreement between the plaintiffs and the principals in the bond, and a breach of that agreement by the plaintiffs, we are of opinion that the court did not err in sustaining the demurrer to each of them.

The sureties, Clark and William McGuire, had no connection with the business of Monaghan and McGuire. One feature of the negotiations, and the alleged agreement between them and plaintiffs, was that they should furnish the surety bond. Clark and William McGuire brought themselves solely under obligation by executing the bond. This recites that Monaghan and McGuire are desirous of purchasing merchandise from plaintiffs, "now and from time to time hereafter," which they "have bound and hereby bind themselves to pay for *in four months after the date of each respective purchase;*" and the condition is that if the said Monaghan and McGuire "shall strictly and faithfully pay or cause to be paid to" plaintiffs, "for merchandise now and hereafter purchased, the moneys due and to become due thereon *when and as the same shall become due and payable,* then this obligation shall be null and void; otherwise," etc. This bond neither incorporates nor refers to the alleged contemporaneous agreement between the principals and the obligees relating to the prices of the merchandise, or the gross amount of sales that might be made upon credit. Contemplating that the credits might exceed $5,000 the sureties expressly limited their liability to that amount. Having fixed this limit, the bond recites what may have been a special stipulation of a general agreement with the principals, and which was of apparent importance to the sureties, namely, that each separate sale of merchandise shall be upon a credit of four months. The bond is, therefore, upon its face, complete in itself, and has no relation to, or dependence upon, a general contemporaneous agreement with the principals relating to the business to be carried on between them and the obligees. It it not pretended that by the agreement the principals were bound to deal exclusively with the plaintiffs, and it is reasonable (in fact, a different arrangement would seem extraordinary) that in commencing a business to continue indefinitely future prices would be regulated by a varying market, and amounts of sales by the needs of a probably increasing volume of business. The bond does not provide for or against such contingencies, either expressly or by inference, but confines itself to a limitation of the amount of the surety's liability and the credits to be given on each sale. In the

absence of any agreement with the surety to the contrary, the law imposes no restriction upon arrangements between principals and obligees that may affect the terms and volume of their continuing business. Domestic S. M. Co. *v.* Webster, 47 Iowa, 357, 361; Amicable Life Ins. Co. *v.* Sedgwick, 110 Mass., 163, 166. Both of those cases were actions upon surety bonds, and are directly in point. See, also, Stuts *v.* Strayer, 60 Ohio St. 384, 387; U. S. Glass Co., *v.* Matthews, 61 U. S. App. 542, 547. The bond, not being by any of its terms dependent upon the agreement between the principals and obligees, the relation between them must depend for its establishment upon parol evidence. In the absence of any allegation that the agreement was to be incorporated in the bond, or referred to therein as creating a dependence of one upon the other, and
19 that it was omitted through mistake, accident, or fraud, such evidence is inadmissible. Domestic S. M. Co. *v.* Webster, 47 Iowa, 357, 361; Seitz *v.* Brewer's Refrigerating Co., 141 U. S. 510, 517; Purity Ice Co. *v.* Hawley Furnace Co., 22 App. D. C. 573, 591; Knight *v.* Walker Co., 23 *Idem* 519, 524; Newman *v.* Baker, 10 *Idem* 187, 194.

It is to be remembered, moreover, that the bond is not merely silent in respect of the alleged contemporaneous agreement, but expressly incorporates one of its stipulations, of obvious importance to the risk assumed by the sureties, namely, that fixing the credit periods.

It is hardly necessary to remark that there is no allegation in the pleas that the bond was not to take effect as an obligation, except upon the performance of a definite, *precedent* condition, as in Burke *v.* Dulany, 153 U. S. 228; and Donaldson *v.* Uhfelder, 21 App. D. C. 489.

3. The sixth special plea of the surety, William McGuire, heretofore recited, must be separately considered.

This plea is not technically one of set-off within the form prescribed by the Code (Sec. 1564), but rather of recoupment, although it has been argued in both aspects.

(1) Treating it as a plea of set-off and assuming that a valid claim for damages comes within the definition of "an indebtedness of the plaintiff to the principal," which the surety might set off under the provisions of section 1568, it is, nevertheless, substantially defective. If it were made the ground of an original action by the other partner, J. Charles McGuire, it would be subject to demurrer, because it does not appear that the partnership with Monaghan, who, it is alleged, terminated it under the malicious persuasion of the plaintiffs, was one for any specified term of duration. No action would lie against Monaghan for terminating a partnership at will. Karrick *v.* Hahneman, 168 U. S. 328, 335. The motives prompting him in so doing, therefore, are immaterial.

It has been held that if one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer, Angle *v.* Chicago, etc., R. Co., 151 U. S. 1, 13; Leonard *v.* Abner-Drury Brew. Co., 25 App. D. C. 161, 175. If, however, the conditions were such that the aggrieved partner might

have a cause of action against the plaintiffs, it would not be maintainable by him or his surety by way of set-off under the Code. Section 1563 thereof provides that: "Mutual debts and claims, under contract between the parties to a common law action, or between any of the several defendants and the plaintiff, * * * may be set off against each other by plea in bar, whether said debts or claims be of the same or a different nature or degree, and whether the claims be for liquidated debts or unliquidated damages for breach of contract; and if either debt be in the form of a penalty of a bond the exact sum to be set-off shall be stated in the plea."

Liberal as this section is in permitting set off, it embraces matters of contract only; and while unliquidated damages for a breach of the contract relating to the sale or warranty of the goods could be set off in an action by the vendors for their value, no damages for a mere tort, as is the case in this plea, can be so pleaded. Matters of mere tort are clearly not within the statute.

Assuming, but without intending to intimate an opinion, that the surety has a right of action for malicious interference in the matter of the partnership contract of his principal, whether that principal has or has not a similar right, it necessarily falls within the same rule of exclusion.

(2) On the other hand, regarding the plea as one of recoupment at common law, independent of any statute, it is likewise bad. The rule which permits the introduction of evidence in defense of actions upon contracts, in mitigation, diminution, or extinction of damages, has been liberally expounded by the courts of common law generally, without the sanction of statutes, through the natural desire to avoid circuity and multiplicity of actions. But no one of these, so far as we are advised, has ever permitted defenses by way of recoupment that were not immediately connected with, or had not arisen out of the same contract or suit on which the plaintiff relied to maintain his action. See Van Buren *v.* Digges, 11 How. 460, 475; Winder *v.* Caldwell, 14 How. 434, 443 (both cases arising in the District of Columbia); Dushane *v.* Benedict, 120 U. S. 630, and cases therein reviewed; R. R. Co. *v.* Car Co., 5 App. D. C. 524, 529; Tyler *v.* Messenger Co., 17 App. D. C. 85, 90.

(3) We have not deemed it important to consider the objection that one of the sureties could not maintain a separate cross action for the damage done to both by the same wrongful act, because the cosurety has filed a similar plea, and the practical result is the same as if they had joined in one.

The judgment must be affirmed with costs, and it is so ordered.

Affirmed.

20 WEDNESDAY, *November 8th, A. D.* 1905.

No. 1550, October Term, 1905.

J. CHARLES MCGUIRE and WILLIAM MCGUIRE, Appellants,
vs.
LOUIS GERSTLEY and WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per MR. CHIEF JUSTICE SHEPARD.

November 8, 1905.

WEDNESDAY, *November 22nd, A. D.* 1905.

No. 1550.

J. CHARLES MCGUIRE and WILLIAM MCGUIRE, Appellants,
vs.
LOUIS GERSTLEY and WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company.

On motion of Mr. L. A. Bailey, attorney for the appellants, It is ordered by the Court that a writ of error to remove this cause to the Supreme Court of the United States, issue, and the bond to act as supersedeas is fixed at the sum of seventy-five hundred dollars.

21 FRIDAY, *November 24th, A. D.* 1905.

No. 1550.

J. CHARLES MCGUIRE and WILLIAM MCGUIRE, Appellants,
vs.
LOUIS GERSTLEY and WILLIAM GERSTLEY, Surviving Partners of the Firm Trading as Rosskam, Gerstley & Company.

On motion of Mr. L. A. Bailey, attorney for the appellants, leave is granted the appellant, J. Charles McGuire, to file a bond for costs on the writ of error in the above entitled cause in the sum of two hundred and fifty dollars, in lieu of supersedeas bond.

22 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between J. Charles McGuire and William McGuire, Appellants, and Louis Gerstley and William Gerstley, surviving partners of the firm trading as Rosskam, Gerstley & Company, Appellees, a manifest error hath happened, to the great damage of the said Appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 6th day of December, in the year of our Lord one thousand nine hundred and five.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

——— ———.

23 (*Bond on Writ of Error.*)

Know all Men by these Presents, That we, J. Charles McGuire, as principal, and Michael P. Sullivan, Dennis W. Magrath, William McGuire, as sureties, are held and firmly bound unto Louis Gerstley and William Gerstley, surviving partners of the firm trading as Rosskam, Gerstley & Company in the full and just sum of Two Hundred and fifty dollars ($250) to be paid to the said Louis Gerstley and William Gerstley, surviving partners as aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty fourth day of November, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between J. Charles McGuire and William McGuire, Appellants, and Louis Gerstley and William Gerstley, surviving partners as aforesaid a judgment was rendered

st the said J. Charles McGuire and William McGuire and the
J. Charles McGuire having obtained a writ of error and filed
y thereof in the Clerk's Office of the said Court to reverse the
nent in the aforesaid suit, and a citation directed to the said
Gerstley and William Gerstley, surviving partners as afore-
iting and admonishing them to be and appear at a Supreme
of the United States, to be holden at Washington, within thirty
from the date thereof:

w, the condition of the above obligation is such, That if the
J. Charles McGuire shall prosecute said writ of error to effect,
nswer all costs if he fail to make his plea good, then the above
ation to be void; else to remain in full force and virtue.

J. CHAS. McGUIRE. [SEAL.]
MICHAEL P. SULLIVAN. [SEAL.]
DENNIS W. MAGRATH. [SEAL.]
WILLIAM McGUIRE. [SEAL.]

led and delivered in the presence of—
WM. F. COLUMBUS.
WM. F. COLUMBUS.
WM. F. COLUMBUS.
WM. F. COLUMBUS.

proved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

ndorsed:] No. 1550. J. Charles McGuire *et al.*, Appellants, *vs.*
Gerstley *et al.* Bond for costs of J. Charles McGuire on Writ
rror to Supreme Court, U. S. Court of Appeals, District of
nbia. Filed Dec. 6, 1905. Henry W. Hodges, Clerk.

(*Bond on Writ of Error.*)

now all Men by these Presents, That we, William McGuire, as
ipal, and Michael P. Sullivan, Dennis W. Magrath, as sureties,
eld and firmly bound unto Louis Gerstley and William Gerst-
surviving partners of the firm trading as Rosskam, Gerstley &
pany in the full and just sum of Seventy five hundred dollars
00) to be paid to the said Louis Gerstley and William Gerstley,
ving partners as aforesaid, their certain attorney, executors,
nistrators, or assigns; to which payment, well and truly to be
, we bind ourselves, our heirs, executors, and administrators,
ly and severally, by these presents.

aled with our seals and dated this twenty third day of Novem-
n the year of our Lord one thousand nine hundred and five.

hereas, lately at a Court of Appeals of the District of Columbia,
suit depending in said Court, between J. Charles McGuire and
am McGuire, Appellants, and the said Louis Gerstley and
am Gerstley, surviving partners as aforesaid a judgment was
ered against the said J. Charles McGuire and William Mc-

Guire and the said William McGuire having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Louis Gerstley and William McGuire, surviving partners as aforesaid citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said William McGuire shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM McGUIRE. [SEAL.]
MICHAEL P. SULLIVAN. [SEAL.]
DENNIS W. MAGRATH. [SEAL.]

Sealed and delivered in the presence of—
WM. F. COLUMBUS.
WM. F. COLUMBUS.
WM. F. COLUMBUS.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1550. J. Charles McGuire *et al.*, Appellants, *vs.* Louis Gerstley *et al.* Supersedeas Bond of William McGuire on Writ of Error to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Dec. 6, 1905. Henry W. Hodges, Clerk.

25 UNITED STATES OF AMERICA, *ss:*

To Louis Gerstley and William Gerstley, surviving partners of the firm trading as Rosskam, Gerstley & Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein J. Charles McGuire and William McGuire are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard Chief Justice of the Court of Appeals of the District of Columbia, this 6th day of December, in the year of our Lord one thousand nine hundred and five.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service of the within citation is hereby acknowledged on behalf of the defendants in error, December 7, 1905.

MYER COHEN,
Of Att'ys for Def'ts in Error.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 7, 1905. Henry W. Hodges, Clerk.

26 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 25, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of J. Charles McGuire and William McGuire, Appellants, *vs.* Louis Gerstley and William Gerstley, surviving partners of the firm trading as Rosskam, Gerstley & Company. No. 1550. October Term, 1905, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 9th day of December A. D. 1905.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 20,019. District of Columbia Court of Appeals. Term No. 168. J. Charles McGuire and William McGuire, plaintiffs in error, *vs.* Louis Gerstley and William Gerstley, surviving partners of the firm trading as Rosskam, Gerstley & Company. Filed December 19th, 1905. File No. 20,019.